

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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**SBC Request for Interpretation,
Waiver, or Modification of the
SBC/Ameritech Merger Conditions**

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CC Docket No. 98-141

ASD File No. 99-49

To: The Commission

**COMMENTS OF
GLOBAL TELECOMPETITION CONSULTANTS, INC. ("GTC")
GLOBAL ALLIANCE FOR TELECOMMUNICATIONS ("GAT")**

INTRODUCTION: On February 18, 2000, the Deputy Chief, Common Carrier Bureau, issued a Public Notice¹ seeking comment on SBC's request for "interpretation, waiver or modification of the SBC/Ameritech merger conditions." Specifically, the Bureau invited parties "to present views on **all aspects** of SBC's February 15th letter." (Emphasis supplied.)² Comments or oppositions are to be filed March 3, 2000, with replies due March 19, 2000.

Global Telecompetition Consultants, Inc. ("GTC") is a management consulting firm offering experienced consulting services and advice to the telecommunications industry. In addition, through its affiliated organization, the Global Alliance for Telecommunications or "GAT," GTC seeks to promote the rapid and effective development of competition for all telecommunications service providers, with special care and concern for new entrants and smaller entities faced with the task of bringing their innovation, zeal for customer service and competitive pricing, to a marketplace

¹ Public Notice DA 00-335, February 18, 2000.

² *Id.*

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entrenched with the stiff opposition and unique advantages of incumbent monopoly carriers such as SBC.

In their respective roles as consultant (GTC), and advocate of small business telecom entrepreneurs (GAT), GTC/GAT have gained direct experience of present-day anti-competitive “gaming” of the DSL marketplace by the incumbent RBOCs, including, and most especially, Ameritech, as a merged entity of SBC; Pacific Bell as a merged entity of SBC; and SBC itself. These comments will briefly describe how clients of GTC have been stifled in their efforts to enter the rapidly emerging market for Internet access via DSL technology by the use of tactics reminiscent of the early bottleneck tactics of the Bell Operating Companies prior to Divestiture.

In making these comments, GTC is less concerned about the technical merits of the SBC waiver request, than for the potential lack of legal merit to SBC’s qualifications to seek what is, in essence, the equity powers of the Commission. In addition, GTC wishes to call attention to the palpable unevenness in the use of Commission resources in relation to its announced intent and commitment to bring the benefits of advanced telecommunications services to the public. In this regard, GTC has reference to the significant devotion of Commission resources to consideration and approval of mergers among the largest incumbent carriers;³ its consideration and approval of Bell

³ *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, FCC No. 99-24, CS Docket 98-178, Memorandum Order and Opinion (“MO&O”), Released 2/18/99, effective upon release; *In the Matter of Application of WorldCom, Inc. And MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, FCC No. 98-225, CC Docket # 97-211, MO&O, Released 9/14/98; *In re: Application of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, FCC No. 99-279, CC Docket (continued...)

Atlantic's entry into the interexchange market in New York;⁴ its lavishing favoritism of the Internet community;⁵ and its betrayal of its long-time commitment to open network access in its rejection of requests for assistance to gain access to local channels of distribution for competing Internet Service Providers.⁶ The Commission's use of its resources to address the interests of the large business, incumbent carriers, belies a true commitment to establish and maintain a truly level playing field in

³(...continued)

No. 98-141, MO&O, Released 10/8/99; *In the Matter of Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, FCC No. 98-276, CC Docket No. 98-25, MO&O, Released 10/23/98; *In re: Applications of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, for Consent to Transfer of Control of Corporations Holding Point-to-Point Microwave Licenses and Authorizations to Provide International Facilities-Based and Resold Communications Services*, FCC No. 98-169, CC Docket No. 98-24, MO&O, Released 7/23/98; *In re: Application of Sprint Corporation, Transferor, and MCI WorldCom, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Parts 1, 21, 24, 25, 63, 73, 78, 90 and 101*, CC Docket No. 99-333, 11/17/99, Joint Applications Filed; *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from U S WEST, Inc., Transferor, to Qwest Communications International, Inc., Transferee*, CC Docket No. 99-272, 8/19/99, Joint Applications Filed; *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Authorizations from GTE to Bell Atlantic*, CC Docket 98-184, 10/2/98, Joint Applications Filed.

⁴ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket 99-295, MO&O, Released 12/22/99, Order to become effective 1/3/00.

⁵ See Remarks of Chairman William E. Kennard: "The Unregulation of the Internet: Laying a Competitive Course for the Future," July 20, 1999, "the FCC's tradition of 'unregulation' of the Internet"; "Competition and Deregulation: Striking the Right Balance," October 18, 1999, "I want to create an oasis from regulation in the broadcast world"; and "E-Rate: A Success Story," January 14, 2000, praising the subsidy of the Internet by taxing traditional telecommunications users.

⁶ *In the Matter of Internet Ventures, Inc., Internet On Ramp, Inc. Petition for Declaratory Ruling That Internet Service Providers are Entitled to Leased Access to Cable Facilities Under Section 612 of the Communications Act*, Docket No. CSR-5407-L, FCC No. 00-37, MO&O, Released 2/18/00.

which the merits of a provider's offerings, business acumen and other talents are allowed and fostered in order to provide equal access to the marketplace; and, instead, where the typical and traditional deference to the large, politically influential incumbents continue to hold sway over policy implementation.

It is submitted that the Commission's apparent failure in these areas may be due to the lack of information about what is really happening in the marketplace; or because some of the smaller competitors have not found an effective vehicle with which to inform the Commission about the difficulties they are facing. With this in mind, GTC determined to accept the invitation of the Bureau to present these views on behalf of its competitive carrier clientele on "all aspects" of SBC's February 15th letter as set forth in the Bureau's Public Notice.

GAMING THE DSL MARKETPLACE. While the incumbent LECs are saturating the marketplace with advertisements and promotions of their own DSL offerings, existing competitive carriers are being stonewalled in their efforts to enter the DSL marketplace. What is at stake for many of these carriers is potentially their long-term survival. More immediate is the loss of new needed revenues, their inability to meet the needs for advanced services of their existing customers, and their inability to establish their competitive position as carriers which can deliver the advances in telecommunications services made possible by technology and the pro-competitive policies of the Commission.⁷

⁷ GTC applauds the Commission's policy determinations on DSL, such as its policy on Line Sharing. *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Released December 9, 1999. Unfortunately, it is not that the Commission has not adopted the correct policies, it is the more vexatious problem that it has (continued...)

Despite the clear and unequivocal directives of the Commission in its DSL decisions, bolstered by specific merger conditions, such as those imposed on Bell Atlantic's merger with NYNEX and SBC's merger with Ameritech, the marketplace facts confronting GTC's clientele is that SBC and its merger partners are consciously ignoring their obligations in this area. Not only are they gaming the system; it is clear that management has not issued any meaningful directives necessary for its personnel to develop the necessary internal processes and systems to implement these directives. In short, having obtained their merger approvals, their 271 entry, and anticipating that they will be able to continue their successful manipulation of the regulatory process, the incumbents have taken no steps to live up to their side of the bargain and have not even attempted a minimalist's approach to do so.

SPECIFIC TACTICS. Existing second and third tier telecom carriers are being frozen out of the DSL/Advanced Services marketplace by the same type of stonewalling tactics used by AT&T prior to Divestiture; and the RBOCs in frustrating the FCC's mid-1980s Open Network Architecture ("ONA") policy. Case in point. A carrier with over 100,000 small business long distance customers has been blocked from bringing DSL/Internet access and related services to its customers. Thus far, this carrier has been blocked for the past five months from turning up DSL services at a cost of a minimum of \$400,000 in lost revenues and 8,000 customers who have remained unserved or which may have been captured by default by the RBOCs.

The stonewalling crosses all relevant markets. The markets in which, and RBOCs by which, DSL has been refused include California/PacBell (SBC); New York and Massachusetts/Bell

⁷ (. . . c o n t i n u e d)
not devoted the same energy and resources to their effective and timely enforcement.

Atlantic; Texas/SBC; Georgia/Bell South; Illinois/Ameritech (SBC); Arizona, Colorado, and Washington/U S WEST. The same is true in these states to the extent the operating territory is serviced by GTE (Bell Atlantic).

The methodologies used to frustrate entry by competitive carriers vary. They include:

- *Offering only high-volume discounts in lieu of wholesale pricing, creating a financial barrier to entry as the shortfall penalties can be prohibitive, *e.g.*, BellSouth.

- * Refusal to make DSL available for resale in any form or under any conditions, *e.g.*, Ameritech.

- * Refusal to split line for high-speed data (DSL) use only and require the purchase of the total loop (voice), *e.g.*, Bell Atlantic and BellSouth.

- * Offering access for DSL only by requiring prohibitively expensive network deployments, *e.g.*, BellSouth allowing access to its Internet POP only through a dedicated connection that requires a digital connection in each LATA, which is prohibitively expensive.

- * “Gaming” provisioning. Despite established electronic order processes being in place for provisioning other services, such as local exchange resale, insisting that orders be faxed in or submitted in writing which are “not received,” “it got lost, please send another,” “the order contained errors,” etc. For example, SBC’s merged PacBell correctly provisioned 10 customers using electronic processing and prompt processing for DSL services and these 10 customers are up and running. The next attempt to add more customers was met with a stonewall, the carrier being told, the processing of the first 10 customers was in error; that electronic submission didn’t apply and could not be used; and since then no new orders have been processed.

The RBOCs are thumbing their noses at the FCC and its policy with impunity. Evidence that none of the RBOCs are taking seriously their regulatory obligations in this area can be found in dealing with the RBOC staffs designated to administer these obligations, namely, the RBOCs do not have internal business models to deal with such administration and the staff assigned is uninformed, uneducated, lack decisional authority and constantly shifts decisional authority back and forth between or among various departments. Further, the lack of any meaningful internal management set up to meet these obligations extends, as well, to pure local resale.

The practices enumerated above have been experienced, identified and understood by an ex-RBOC employee who is completely conversant with the internal workings of the RBOCs and, hence, recognizes what is actually taking place and can and will attest to same.

The FCC has publicly imposed “pro-competitive” or “anti-abuse” conditions on its approvals of these mergers; it established a special staff to police the SBC/Ameritech merger; and the FCC’s Chairman recently announced a new “enforcement ethic.” All positive on the surface; but in reality these initiatives have fallen on deaf and defiant ears. Whether or not the FCC has the ability and will to police these areas, the RBOCs seem totally unconcerned and, hence, remain defiant and ignore any real commitment to their regulatory obligations.

While the RBOCs are stifling competition in the advanced services marketplace, they are marketing intensely their own advanced services and, by the combination of stonewalling and marketing, are capturing market share, presence and name recognition which will close the competitive opportunities for others.

As can be seen, the anti-competitive practices in regard to DSL are not limited to SBC or its affiliates. Nonetheless, there are specific examples of SBC’s refusal to meet its regulatory

obligations in this area, which GTC submits is relevant to the Commission's consideration of the present waiver request. For example, should the Commission investigate and determine that the reports provided herein are indeed true, which they are, they call into question SBC's statements in the first page of its waiver request that "SBC, its incumbent LECs and Advanced Services affiliates are working diligently to implement advanced services provisions of the Merger Conditions and the Commission's UNE Remand and Line Sharing Orders" and that it is "moving forward as quickly as possible with the ongoing objective to comply with the Merger Conditions and the requirements of the Telecommunications Act of 1996."

Secondly, one of the main points of the SBC waiver request is to shift ownership of specific network components from the Advanced Services affiliate of the SBC merged entities to the monopoly incumbent operating LEC companies owned by SBC. SBC presents this as a solution to its apparent concern for the proliferation of components raising such problems as zoning issues (Request @ 4). SBC also represents that it has had discussions with CLECs and the first intimation is that these discussions have produced positive reactions from these competitors. Yet, when SBC actually identifies such CLECs, Northpointe and COVAD, two of the most well-known competitive DSL providers, all that SBC can represent is that one has not yet taken a position and the other will directly inform the Commission on its position. Hence, it will not be known what position these two CLECs will take, but they have not as yet determined that SBC's plan would be appropriate from their own views (which of course do not speak for the industry itself). The more important point is that, even if support is garnered from competitive CLECs, that support would be based in part on the trustworthiness of SBC's implementation of its professed commitments. Yet, its overall performance over the years and, in particular, its recent performance in regard to DSL makes

questionable SBC's actual intent to implement its expressed commitments. GTC clients have, for example, been told by Ameritech representatives that it is not capable or does not have to allow resale of DSL until its advanced services affiliate is formed. Yet, the Merger Conditions which SBC represents in this waiver request it is diligently working to implement required the formation of that affiliate as a condition to approval of the merger itself. In short, a central condition believed to have been satisfied prior to the October 1999 approval of the SBC/Ameritech merger, is being represented as something yet to be accomplished and as justification for refusal to make DSL available for resale in Ameritech's operating territories.

SBC's pitch on the second component, its OCD, is much the same as to the combination plug/cards in remote terminals and, therefore, is challengeable on the same basis, the lack of any factual basis upon which to rely on SBC's promises. And, not only does SBC again represent on the one hand that its discussions with competitive CLECs about its transfer of OCDs to its monopoly LEC have been positive, only to admit that this is not what SBC has been told by Northpointe or COVAD (Request @ 6), it relies for support of its request on its view that some unidentified CLEC "voiced strong concerns and objections about a competitor, SBC's Advanced Services affiliate, owning the OCDs." (Id.) Even if SBC were to become forthcoming and identify this CLEC, it is by no means certain that the CLEC favors SBC's solution of taking the henhouse OCD from the charge of one fox (SBC's affiliate) and giving it to the charge of a bigger fox (SBC's LECs).

These circumstances undercut SBC's representation that a grant of its request "is in the public interest, is non-discriminatory, promotes the efficient mass-market deployment of advanced services . . ." (Id.) On the contrary, not only is a grant of SBC's request not shown to have these benefits, its suggestions of alternatives in the event the request is not granted, may be considered

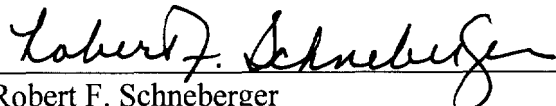
admissions of its intent to continue to frustrate the policies of the Commission. If the Commission “disagree[s], however, we would request . . . under Paragraph 72, an **indefinite extension** of SBC’s obligation to comply with Paragraphs 3d and 4n(5).” (Id., Emphasis supplied.) And further: “The rejection of SBC’s proposal . . . could lead to unnecessary delay in bringing the benefits of advanced services to customers on a wide-spread basis.” (Id.)

This “threat” should be understood in the context that SBC and its newly acquired properties are currently deliberately delaying the provisioning and even the availability of DSL services to its competitors and apparently has yet to comply with a fundamental pre-condition to its merger with Ameritech -- the forming of an advanced services affiliate in the Ameritech operating territories.

Despite the harm being visited on GTC’s clients from the actions herein outlined, GTC will await the comments of others, most particularly Northpointe and COVAD and other CLECs. If their comments show substantial merit to SBC’s proposal, GTC does not wish to delay those merits from reaching the marketplace; but GTC will insist that the barriers to entry into the DSL market of its clients be addressed, and promptly, so that all interested and capable competitors have equal opportunity to compete.

Respectfully submitted,

Global Telecompetition Consultants, Inc.
Global Alliance for Telecommunications

By: 
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Dated: March 3, 2000

CERTIFICATE OF SERVICE

I, Robert F. Schneberger, Executive Vice President of Global Telecompetition Consultants, do hereby state and affirm that copies of the foregoing "Comments of Global Telecompetition Consultants, Inc. ("GTC") and Global Alliance for Telecommunications ("GAT"), in CC Docket No. 98-141, ASD File No. 99-49, were delivered upon the following via hand delivery, this 3rd day of March, 2000.

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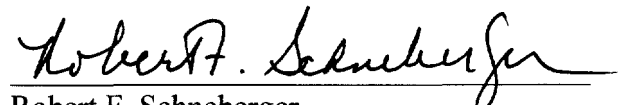
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